
**Before the
Department of Commerce
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
and the
Department of Agriculture
RURAL UTILITIES SERVICE
Washington, DC**

In the Matter of)
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Broadband Initiatives Program and Broadband) Docket No. 0907141137-91375-05
Technology Opportunities Program)
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To: The National Telecommunications and Information Administration and the Rural
Utilities Service

**COMMENTS OF THE INDEPENDENT TELEPHONE AND
TELECOMMUNICATIONS ALLIANCE (ITTA)**

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EXECUTIVE SUMMARY

ITTA represents mid-sized local exchange carriers that currently deploy broadband to some of the most rural and hard-to-serve customers in America. ITTA members would like to deploy broadband further into the rural portions of their service territories, but are generally prevented from doing so by the fundamentally uneconomic nature of such investments. Grants under the ARRA to reduce capital costs could overcome some of the economic barriers to such investments, bringing broadband within the reach of more Americans.

To serve the ARRA's goals most effectively, the second round of BTOP and BIP funding should be focused on bringing broadband services to *unserved* areas. To this end, scoring criteria should award more points for deploying last-mile broadband facilities in unserved areas. Middle mile projects should continue to be required to include a component for serving end users who lack broadband access today.

The programs also must be modified to prevent any further arbitrary restrictions on infrastructure projects in rural, unserved areas. This will involve modifying some or all of the following rules for Round Two: the requirement that rural infrastructure project applications be considered first by RUS; the definition of "remote"; and the limitation on the amount of grant funding in BIP awards to 50 percent in non-remote areas.

In the Round Two NOFA, NTIA and RUS should defer to the FCC in the formulation of nondiscrimination and network interconnection requirements. The FCC recently opened a proceeding on these issues, and the FCC's rules should govern from the time they take effect. Moreover, any ARRA-specific requirements should not constrain providers' operations outside of the reasonably foreseeable future. These requirements, accordingly, should sunset at a date no later than the end of the build-out period under an award.

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The Independent Telephone and Telecommunication Alliance (ITTA) submits the following comments in response to the Request for Information (RFI) issued jointly by the Rural Utilities Service (RUS) of the Department of Agriculture and the National Telecommunication and Information Administration (NTIA) of the Department of Commerce.¹

INTRODUCTION

The RFI seeks comments on a number of questions regarding the Notice of Funds Availability (NOFA) that will be issued for Round Two of funding for the Broadband Initiatives

¹ *Broadband Initiatives Program and Broadband Technology Opportunities Program*, Joint Request for Information, NTIA and RUS, Docket No. 0907141137-91375-05, 74 Fed. Reg. 58940 (Nov. 16, 2009) (the “RFI”).

Program (BIP) and Broadband Technology Opportunities Program (BTOP) administered by RUS and NTIA, respectively. These programs were created by the American Recovery and Reinvestment Act of 2009 (ARRA),² and collectively provide up to \$7.2 billion to increase broadband deployment and adoption in America. ITTA welcomes the opportunity to provide input on the Round Two NOFA and offers the following comments to improve the BIP and BTOP application and selection process, so that the programs will better meet the goal of Congress and the Obama Administration that broadband be made available to all Americans.

The members of ITTA are mid-size local exchange carriers that offer a wide variety of state-of-the-art voice, data, and video telecommunication services to more than 30 million customers in 44 states.³ ITTA's members serve primarily rural and suburban markets. These markets include some of most challenging and costly areas of the Nation to serve. In spite of the challenges in serving significantly rural territories, ITTA's members have invested heavily in broadband. Today ITTA member companies already offer broadband to an average of 85 to 90 percent of their customers. The greatest challenge to reaching the remaining 10-15 percent of their customers is the high cost of providing service to the most sparsely populated parts of their service territories.

Throughout the development of ARRA and in the RFI⁴ for the Round One NOFA,⁵ ITTA participated and offered input as to how the programs should be crafted to best increase the

² Pub. L. No. 111-5, 123 Stat. 115 (2009) ("ARRA").

³ The members of ITTA include CenturyLink, Comporium Communications, Consolidated Communications, Frontier, Fairpoint, IowaTelecom, Qwest, TDS and Windstream.

⁴ American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Docket No. 090309298-9299-01, Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716 (March 12, 2009) ("Round One RFI").

availability of broadband for all Americans.⁶ ITTA has consistently advocated for the primary focus of these funds and programs to be on those areas of the country that have no access to broadband today. Many of the areas that are unserved today remain so because an economic business case to provide service cannot be made. The funds dedicated to BIP and BTOP can be used to bridge the gap in these areas and allow otherwise unserved customers to realize the education, health care, economic development, and other opportunities that broadband offers.

In addition to calling for BIP and BTOP funds to be focused on unserved areas, ITTA has asked RUS and NTIA not to impose onerous regulations and conditions on receipt of funds that would discourage companies from seeking funds through these programs.⁷ ITTA also has urged RUS and NTIA to ensure that applications that are funded by BIP and BTOP are sustainable beyond the duration of the grant or loan terms. No one will be well served if a project supported by public funds cannot continue to serve consumers over the long run.

Given the short time frame for development and submission of comments in response to the RFI, ITTA has chosen to focus on a few key points for commentary, rather than to provide responses to all questions posed in the RFI. For ease of tracking, ITTA submits responses to select questions in the order in which they were presented in the RFI. In these responses, ITTA emphasizes that, for BIP and BTOP to be successful, significant priority must be given to projects targeted toward providing broadband service in unserved areas, regulatory burdens

⁵ Broadband Initiatives Program, RIN 0572-ZA01; Broadband Technology Opportunities Program, RIN 0660-ZA28, Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 33104 (July 9, 2009) (“Round One NOFA”).

⁶ Comments of ITTA, American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Docket No. 090309298-9299-01 (filed April 13, 2009) (“ITTA Round One Comments”).

⁷ *Id.*

created by the nondiscrimination and interconnection provisions must be minimized, and projects that are funded must be sustainable.

I. The Application and Review Process

Section I.A.4. – Relationship Between BIP and BTOP

Under the Round One NOFA, infrastructure applications to serve areas that are at least 75 percent “rural” must first apply to RUS.⁸ Only after RUS reviews the application and determines not to fund it can the application be considered by NTIA.⁹ The RFI asks whether rural infrastructure applications should continue to be submitted to RUS or whether the agencies should permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well.¹⁰

Under the Round One NOFA, projects that met the definitions of “rural” and “remote” could receive grant funding for up to 100 percent of project costs from RUS, while those that were “rural” but not “remote” were limited to 50/50 grant/loan awards from RUS.¹¹ Projects that were “rural” and “non-remote” but which sought more than a 50 percent grant could only be considered by NTIA after RUS had reviewed the projects and determined not to fund them.¹²

This regime created uncertainty on the part of applicants seeking grants for more than 50 percent of project costs in a rural, non-remote area: It was unclear whether RUS would review and make a formal determination on these projects (and thereby trigger the prospect of an NTIA award), or if RUS would decline to fund the projects and dismiss them without the review and

⁸ Round One NOFA, 74 Fed. Reg. at 33113.

⁹ *Id.*

¹⁰ RFI, 74 Fed. Reg. at 58941.

¹¹ Round One NOFA, 74 Fed. Reg. at 33113

¹² *Id.*

determination needed prior to an NTIA award. To remove this uncertainty, ITTA asks that all applicants proposing projects in rural areas be allowed to submit their applications directly to NTIA. As discussed in greater detail later in these comments, ITTA also recommends that the definition of “remote” be abandoned for Round Two of funding because funding limitations based on this definition preclude the possibility of sufficient funding for many projects seeking to provide broadband to unserved areas of the country.

In any event, ITTA recommends that RUS remove its 50 percent restriction on grant funding for infrastructure projects in rural areas that do not meet the Round One NOFA’s definition of “remote.” In many of the rural areas of the country that are currently unserved, the primary reason the area does not have access to broadband is that the underlying economics of the area will not support broadband investment. In these cases, it is not access to capital, but the inability to make a reasonable return on costly investments that is the impediment to deployment. For ITTA’s members, the areas that are unserved today are primarily the most rural and sparsely populated parts of their service territories. Customer densities can be as low as three customers per square mile. This is true even in areas that do not meet the Round One NOFA’s definition of “remote.” In these areas, densities, distances, and pole attachments make deploying broadband simply too expensive. Even after deployment, the some low density areas often do not generate sufficient continuing revenue to operate except at an economic loss. Even after deployment, the lowest density rural areas often cannot be operated except at an economic loss. Grants (and not loans) are needed to reduce the gap and make investing in these projects economic and prudent business decisions.

In addition to removing the 50 percent grant limitation, ITTA recommends RUS continue its practice of not requiring stimulus applicants to take a loan from RUS as part of their award. Given many companies’ prior financing commitments, requiring that RUS to have a first lien on

the facilities that are part of a BIP award could eliminate an RUS grant as an alternative for some broadband providers. Allowing an awardee to forgo the loan not only streamlines the process, but also allows BIP funds to be further leveraged and made available for other projects.

In the alternative, if the grant restrictions or loan requirements are not modified as suggested above, ITTA asks that applicants seeking greater than a 50 percent grant and/or not seeking an RUS loan for projects in rural areas be allowed to submit applications directly to NTIA. This process will continue to require coordination between NTIA and RUS to ensure duplicate projects are not funded, but would eliminate the requirement that RUS review and deny a rural application before NTIA could fund it.

II. Policy Issues Addressed in the NOFA

Section II.A. – Funding Priorities and Objectives

As the NOFA and funding priorities are developed for Round Two, ITTA urges RUS and NTIA to give priority in funding – and scoring – to applications that focus on broadband projects intended to serve currently unserved rural areas of the Nation. Consistent with the Congressional intent, the education, health care and economic development benefits of broadband must be available to the greatest number of Americans possible. The ARRA recognized this principle when it directed RUS to give priority to applications seeking to serve unserved areas and reach the highest proportion of rural residents who do not have access today,¹³ and in making the first purpose of BTOP to “provide access to broadband service to consumers residing in unserved areas of the United States.”¹⁴ Thus, as Congress recognized, deploying broadband to unserved areas must be a foremost priority for the limited funds made available through the ARRA.

¹³ ARRA, Div. A, Title I.

¹⁴ ARRA, Div. B, Title V, § 601(b)(1).

By prioritizing projects that will bring broadband connectivity to unserved areas, RUS and NTIA can maximize fulfillment of the statutory goals for the broadband stimulus program. At the same time, prioritizing projects to bring service to unserved areas also maximizes the extent to which the ARRA's other goals (including advancement of smart grid, intelligent transportation, and electronic medical records) also can be advanced, because these other goals all depend upon the presence of broadband infrastructure. Scoring criteria, accordingly, should place significant weight on whether a project would deploy broadband in an unserved area.

To maintain the focus and priority on getting service to unserved areas, RUS and NTIA should require any applications for middle mile projects to include a component for serving end users who do not have broadband access today. The ARRA provides \$7.2 billion for broadband infrastructure and related programs. While \$7.2 billion is not an insignificant amount of funding, the costs of deploying broadband to all unserved areas (estimated at \$20-350 billion by the FCC National Broadband Plan team¹⁵) makes clear that the ARRA broadband funds are but a down payment as to what will be needed to fully implement a true national broadband strategy. Thus, the agencies must ensure the funds are spent as prudently and effectively as possible, to bring broadband access to those who have no access today. Furthermore, RUS and NTIA should prioritize grants to applicants with proven track records of deploying broadband facilities successfully in rural areas.

¹⁵ Presentation of the National Broadband Plan team, FCC Open Commission Meeting, September 29, 2009, at slide 45 (available at http://www.fcc.gov/openmeetings/2009_09_29-ocm.html).

Section II.B. – *Program Definitions.*

As discussed above, significant prioritization must be given to applications that provide broadband to unserved areas.¹⁶ Even though there was no statutory authority for it, RUS created a further distinction for funding of “remote” rural areas in the first NOFA. As defined by RUS, a remote area is “an unserved, rural area 50 miles from the limits of a non-rural area.”¹⁷

Maintaining the Round One NOFA’s prohibition against BIP full grants exceeding 50% funding in rural areas that do not qualify as “remote” will preclude funding for a number of projects in rural, unserved areas, thus running contrary to Congress’ intent that RUS give priority to projects that provide broadband access to the greatest number of unserved consumers.¹⁸ As discussed above, in the Round One NOFA, the interplay of the “remote” definition with other BIP program restrictions served to restrict funding for meritorious potential BIP projects in unserved, non-remote areas.¹⁹ If RUS wants to ensure that its BIP program gets the most “bang for the buck,” it should modify its requirements to receive ARRA funding for rural broadband. These changes could have a meaningful impact in moving the needle on broadband availability in rural America.

The definition of “remote” should be removed or revised to be less restrictive. As RUS representatives have heard repeatedly at Congressional and other hearings, exclusion of areas within a 50 mile radius of a non-rural area effectively denies sufficient RUS funding in rural, non-remote projects, leaving thousands (if not millions) of Americans who could have benefited from broadband projects funded by ARRA in the cold. If RUS decides to continue special

¹⁶ See *supra* Response to Section II.A. (Funding Priorities and Objectives)

¹⁷ Round One NOFA, 74 Fed. Reg. at 33109.

¹⁸ ARRA, Div. A, Title I.

¹⁹ See *supra* Response to Section I.A.4. (Relationship Between BIP and BTOP).

treatment for “remote” areas, RUS should consider alternatives to its current definition of “remote,” such as simply reducing the radius from 50 to 25 miles, or excluding census blocks that are in an urban area as defined by the US Census Bureau. In any event, the focus of both the BIP and BTOP programs needs to be getting broadband networks and services into rural areas where they do not exist today.

Section II.D. – *Interconnection and Nondiscrimination Requirements.*

ITTA continues to be concerned with the nondiscrimination and interconnection requirements placed on BIP and BTOP recipients by the first NOFA. As operators of regional and multi-state networks, ITTA members cannot readily segment their networks and apply differing nondiscrimination and interconnection requirements to different segments.

The FCC recently adopted an NPRM on network neutrality and Internet openness.²⁰ Ideally, NTIA and RUS should limit the scope of the nondiscrimination and interconnection obligations to compliance with the FCC’s Internet Policy Statement. While ITTA opposes the imposition of additional nondiscrimination and interconnection requirements on broadband networks, it believes that any new requirements should be imposed – if at all – in the context of the ongoing fact-based rulemaking proceeding at the FCC. This also would be consistent with the agencies’ decision in the Round One NOFA to effectively defer to the FCC regarding the content of nondiscrimination requirements.²¹

²⁰ *Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Notice of Proposed Rulemaking, FCC 09-93 (rel. Oct. 22, 2009).

²¹ Round One NOFA, 74 Fed. Reg. at 33110-11 (defining network non-discrimination requirements in terms of the FCC’s Internet Policy Statement).

RUS and NTIA also should clarify that any BIP and BTOP and rules related to nondiscrimination and interconnection will sunset in their entirety upon either (1) adoption of any FCC rules that address network neutrality obligations of broadband providers or (2) a reasonable date within the foreseeable future. This clarification will minimize the confusion and uncertainty applicants and awardees face at the prospect of being subject to inconsistent rules developed by multiple agencies. And even if the FCC does not adopt network neutrality rules, RUS and NTIA should limit the duration of any specific additional nondiscrimination and interconnection requirements to reflect the fact that awardees cannot fully predict how they will need to respond to technological and market evolution in the future. A logical end point would be the end of the build-out period for any given award.

ITTA strongly believes that any nondiscrimination and interconnection provisions also must apply to all applicants, regardless of the nature of the entity. In addition, any such provisions must continue to be technologically neutral, and enforced in such a manner.

The nondiscrimination and interconnection provisions of the first NOFA discouraged a number of incumbent broadband service providers from applying for funds during the first round. Without clarification to remove some of the uncertainty described above, it is likely these providers – and those that are most able to provide broadband in rural, unserved areas – again will decide not to seek funding during Round Two.

CONCLUSION

Consistent with the comments above, RUS and NTIA should make changes to the NOFA for Round Two of the BIP and BTOP application processes to ensure funds are targeted to unserved rural areas of the country. The scoring criteria must reward projects that seek to build broadband infrastructure in rural parts of the Nation that have no access today.

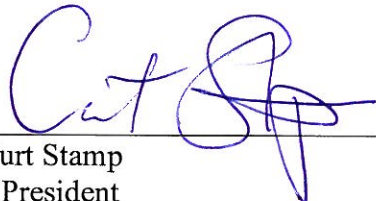
In addition, the percentage of grant funding that is available under BIP needs to be increased so that broadband service providers can invest prudently and economically in projects in rural, unserved areas. RUS should remove or substantially relax its funding restrictions based on whether a rural area qualifies as "remote," as these restrictions preclude projects that could reach thousands, if not millions, of otherwise unserved Americans.

Finally, the nondiscrimination and interconnection provisions must be both scaled back and clarified to provide greater consistency with actions pending at the FCC. These obligations should expire when the FCC completes its ongoing examination of the need for any additional requirements or an reasonable date within the foreseeable future. These actions would serve the purposes of ARRA by removing regulatory uncertainty.

Respectfully submitted,

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